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KASHMERI DEVI

v.

DELHI ADMINISTRATION & ANR.

APRIL 25, 1988

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[K.N. SINGH AND M.H. KANIA, JJ.]

*Constitution of India, 1950: Article 136—Police investigation—Credibility of—Death in police custody—Allegations of murder and torture against police officers—Court finding that efforts made to protect and shield guilty police officers—Trial court directed to have thorough and proper investigation by C.B.I.*

*Criminal Procedure Code, 1973: Section 173(8)—Death in police custody—Allegations of torture and murder against police officers—Supreme Court finding that efforts made to protect and shield guilty police officers—Trial magistrate directed to have proper and thorough investigation by C.B.I.*

The appellant was the widow of a tonga driver who died in police custody. It is alleged that on the fateful night of 22/23.8.1986 two sub-inspectors accompanied by two constables visited the house of one Sudesh Kumar, and started beating him. On hearing his shrieks his maternal uncle Gopi Ram, the tonga driver tried to intervene whereupon the policemen are alleged to have beaten him also. Both of them were arrested taken to the police station, stripped of their clothes and beaten with iron rods. The tonga driver succumbed to his injuries at the police station. Thereafter, a post mortem was conducted and the dead body was cremated without handing it over to the appellant.

F The aforesaid incident caused consternation in the locality, and a mob surrounded the police station to lodge its protest against the death of the tonga driver in police custody. Undaunted the police registered a case under Sections 147-149 and 353/332 I.P.C. against the brother of the deceased and others as they were members of the mob.

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Sudesh Kumar filed a written complaint naming the two sub-inspectors and the constables as responsible for the death of his maternal uncle which was registered under Section 302/342 I.P.C. No action was however taken against those officers. After some time the case was converted to Section 304 I.P.C. for purpose of investigation.

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The appellant approached the High Court by a writ petition under Article 226 for transferring the investigation of the case from the Crime Branch of the State Police to the Central Bureau of Investigation. The Division Bench, however, dismissed the petition.

**Disposing of the Appeal, this Court,**

**HELD:** 1. The police have not acted in a forthright manner in investigating the case registered on the complaint of Sudesh Kumar. [704C-D] A

2. The circumstances available on record *prima facie* show that effort has been made to protect and shield the guilty officers of the police who are alleged to have perpetrated the barbaric offence of murdering Gopi Ram by beating and torturing. [704D] B

3. The appellant had been crying hoarse to get the investigation done by an independent authority but none responded to her complaint. [704D-E] C

4. The Additional Sessions Judge while considering the bail application of one of the Constables—Jagmal Singh, considered the autopsy report and observed that the Doctor had postponed giving his opinion regarding the cause of death although the injuries were *anti-mortem*. [704D-E] D

5. The Sessions Judge referring to a number of circumstances observed that the investigating officer had converted the case from Section 302 IPC to 304 IPC on flimsy grounds within hours of the registration of the case even without waiting for the post mortem report and that it was a *prima facie* case of deliberate murder of an innocent illiterate poor citizen of Delhi in police custody and investigation was partisan. [704E-F] E

6. In the interest of justice it is necessary to get a fresh investigation made through an independent authority so that the truth may be known. [704H] F

7. The trial court before whom the charge sheet has been submitted shall exercise its powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the C.B.I. will investigate the case in an independent and objective manner and submit additional charge sheet if any in accordance with law. [705A-B] G

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A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 280 of 1988.

From the Judgment and Order dated 26.9.1986 of the High Court of Delhi in Crl. W.P. No. 361 of 1986.

B R.L. Panjwani and R.D. Upadhyay for the Appellant.

S. Madhu Sudan Rao, N.L. Kakkar and Miss A. Subhashini for the Respondents.

The following Order of the Court was delivered:

C O R D E R

Special leave granted.

D This is an unfortunate case which tends to shake the credibility of police investigation and undermines the faith of common man in Delhi Police which is supposed to protect life and liberty of citizens and maintain law and order. There has been serious allegations of murder by torture against the police and further about the haphazard manner in which the investigation against the accused police officers was investigated with a view to shield the guilty members of the Delhi Police.

E Kashmeri Devi the appellant is the unfortunate widow of Gopi Ram deceased who was a tonga driver. On the fateful night of 22/23.8.1986 two sub-inspectors accompanied by two constables visited the house of Sudesh Kumar of Prem Nagar. It is alleged that they started beating Sudesh Kumar. Hearing his shrieks his maternal uncle Gopi Ram deceased came to the spot, he tried to intervene whereupon the police men are alleged to have giving him beating also. Gopi Ram and Sudesh Kumar both were arrested and taken to the Police Station Patel Nagar where they were stripped of their clothes and the police men gave them serious beating with the help of iron rods and iron rulers. It is alleged that Gopi Ram succumbed to his injuries at the police station sustained at the hands of Satish Kumar and Rana sub-inspectors and Jagmal Singh and Romesh constables while in police custody. It is alleged that thereafter a post mortem was conducted and the dead body of Gopi Ram was cremated without handing over the dead body to the appellant. This incident caused consternation in the locality and on 23.8.1986 a mob surrounded the police station to lodge

its protest against the death of Gopi Ram deceased at the police hands, Undaunted the Patel Nagar police registered a cause under Section 147/148/149/353/332 of the Indian Penal Code against Shankar brother of the deceased who was arrested along with others on 23.8.1986 as they were members of the mob. Sudesh Kumar who had been taken to the police station along with Gopi Ram filed a written complaint at the police Station Patel Nagar on 23.8.1986, making allegations against the two sub-inspectors and the constables. In that complaint Sudesh Kumar alleged that as a result of beating by police officers his maternal uncle became unconscious and thereafter the police officers kept on beating him at the police station as a result of which he died. He further alleged that the police officers took the dead body of Gopi Ram to the hospital from there they brought it to another hospital, where he was forced to sign blank papers. He named the police officers who were responsible of the death of his maternal uncle. On that complaint a case was registered under Sections 302/342 IPC against the police officers of Patel Nagar Police Station but no action was taken against those officers. After some time case was converted to Section 304 IPC for purpose of investigation. The appellant Kashmeri Devi approached the High Court by means of a writ petition under Article 226 of the Constitution for transferring the investigation of the case from the Crime Branch of the Delhi Police to Central Bureau of Investigation. Division Bench of the High Court dismissed the writ petition by its order dated 26th September, 1986. Thereupon, the appellant approached this Court by means of special leave petition.

During the pendency of the special leave petition this court granted time to the respondents twice for filing counter-affidavit but the respondents failed to file their counter affidavit. Ultimately on 11.4.1988 Kanwaljit Deol, Deputy Commissioner of Police Head Quarters has filed counter affidavit setting out a totally different story. He has stated that on 23.8.1986 the police received information that one Gopi of Prem Nagar was brought dead by Sudesh Kumar from Prem Nagar to Ram Manohar Lohia Hospital, New Delhi. On receipt of the information from the Hospital one sub-inspector of police went to Dr. Ram Manohar Lohia Hospital and obtained medical legal certificate of the deceased's Gopi Ram. It is alleged that on a personal search of the deceased's body the police recovered 5 small packets of smack from his pocket. In his affidavit an attempt has been made out to show that Gopi Ram had died on account of alcohol and morphine and not on account of any injuries caused to him by the police and in this connection a story has been set up that Sudesh Kumar had brought the dead body to Dr. Ram Manohar Lohia Hospital and on receiving

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A information from the Hospital the police made recovery of smack from the deceased's pocket. The affidavit is completely silent about the allegations made by the appellant that the Gopi Ram and Sudesh Kumar were arrested taken to the police station and Gopi Ram was beaten to death. The affidavit further refers to some medical report which purports to state that deceased died on account of alcohol and morphine. It is further stated that after taking into consideration the cause of the death given by the Doctor, charges were amended to Sections 323/342/34-IPC and after completing the investigation challan was prepared and the same has been put in the Magistrate's Court. The affidavit of Kanwaljit Deol states that in the absence of evidence the story set up by Sudesh Kumar could not be substantiated.

C After hearing learned counsel for the parties and on perusal of the record we are satisfied that *prima facie* the police have not acted in a forthright manner in investigating the case, registered on the complaint of Sudesh Kumar. The circumstances available on record *prima facie* show that effort has been made to protect and shield the guilty officers of the police who are alleged to have perpetrated the barbaric offence of murdering Gopi Ram by beating and torturing. The appellant has been crying hoarse to get the investigation done by an independent authority but none responded to her complaint. The Additional Sessions Judge while considering the bail application of Jagmal Singh, Constable, considered the autopsy report and observed that Doctor had postponed giving his opinion regarding the cause of death although the injuries were antimortem. The learned Sessions Judge referring to a number of circumstances observed that the investigating officer had converted the case from 302 IPC to 304 IPC on flimsy grounds within hours of the registration of the case even without waiting for the postmortem report. The learned Sessions Judge further observed that it was a *prima facie* case of deliberate murder of an innocent illiterate poor citizen of Delhi in police custody and investigation was partisan.

F We are in full agreement with the observations made by the learned Sessions Judge. As already noted during the pendency of the G writ petition before the High Court and special leave petition before this Court the case was further converted from 304 IPC to 323/34 IPC. *Prima facie* the police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made H through an independent authority so that truth may be known.

We are in full agreement with the observations made by the learned Sessions Judge. As already noted during the pendency of the G writ petition before the High Court and special leave petition before this Court the case was further converted from 304 IPC to 323/34 IPC. *Prima facie* the police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made H through an independent authority so that truth may be known.

Since according to the respondents charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law. The appeal stands disposed of accordingly.

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N.V.K.

Appeal disposed of.